

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BANK OF THE WEST et al.,

Plaintiffs and Appellants,

v.

EDGARDO RUIZ et al.,

Defendants and Respondents.

B253980

(Los Angeles County  
Super. Ct. No. BC499926)

APPEAL from an order of the Superior Court of Los Angeles County, Elizabeth Allen White, Judge. Affirmed.

Schaffer, Lax, McNaughton & Chen, John H. Horwitz, Jill Ann Franklin, Yaron F. Dunkel; Callahan, Thompson, Sherman & Caudill, Robert W. Thompson, Tiffany S. Woods; Paul A. Brennan for Plaintiffs and Appellants.

Irell & Manella, Andrei Lancu, Harry Mittleman and Kevin Kiley for Defendants and Respondents.

## I. INTRODUCTION

Cross-defendants, Bank of the West (the bank), Champion Chrysler Jeep Dodge (the dealership) and Louie Gonzalez appeal from an order denying their petition to compel arbitration. The bank filed a complaint against cross-complainants, Edgardo and Wendy Ruiz, for claims based upon an automobile sale contract. Mr. Ruiz is Ms. Ruiz's father. Cross-complainants later filed a cross-complaint against cross-defendants for rescission of the automobile sales contract and related claims. Cross-defendants filed a petition to compel arbitration citing the arbitration clause in the automobile sale contract. The trial court denied the petition to compel arbitration. We affirm.

## II. BACKGROUND

### A. The Bank's Complaint

On January 23, 2013, the bank filed a complaint for contract breach, money lent, personal property recovery and conversion. The bank alleges: Mr. Ruiz entered into a retail installment sale contract on September 18, 2011, for a new 2012 Dodge Charger automobile; Mr. Ruiz promised to make monthly payments; Mr. Ruiz defaulted by failing to make the monthly September 18, 2012, and subsequent payments; and the Ruizes remained in possession of the Dodge. The bank requests: damages for the amount still owed, plus charges and interest; sale of the Dodge; damages for conversion; general and punitive damages; attorney's fees; and costs.

### B. The Ruizes' Cross-Complaint

On October 3, 2013, the Ruizes filed their cross-complaint against cross-defendants for: fraud; duress; undue influence; fraudulent misrepresentation; failure to provide disclosures required by state and federal law; and intentional emotional distress

infliction. The causes of action in the cross-complaint are not all brought by both of the Ruizes nor do they apply to all cross-defendants. The Ruizes allege the following: the dealership operated an automobile retail store in Downey, California; the bank operated and was incorporated in California; in September 2011, Mr. Ruiz gave Ms. Ruiz his 2007 Dodge Charger to be used as a trade-in for the purchase of a new car; on September 18, 2011, Ms. Ruiz went to the dealership with her boyfriend and two young children; she gave the keys for the trade-in to Mr. Gonzalez for valuation; Ms. Ruiz test drove the 2012 Dodge Charger and negotiated monthly payments for the new car; she had second thoughts about purchasing the new Dodge but was told the trade-in was already gone and she could not get it back; this was at approximately 11:00 p.m.; Ms. Ruiz was told she needed Mr. Ruiz's signature because the trade-in car was in his name; the dealership's manager directed Mr. Gonzalez to follow Ms. Ruiz home; she did not want to take Mr. Gonzalez to her home because Mr. Ruiz worked early in the morning and was likely asleep; the dealership's manager and Mr. Gonzalez insisted; Ms. Ruiz then drove the new Dodge to her father's house; Mr. Gonzalez followed Ms. Ruiz; by the time they arrived at Mr. Ruiz's home, it was past midnight; and Mr. Ruiz was asleep and had to be awakened.

Mr. Gonzalez demanded Mr. Ruiz's sign a document. Mr. Gonzalez falsely represented that the document related only to the trade-in used by Ms. Ruiz. Mr. Gonzalez also falsely claimed that any contract for the 2012 Dodge Charger would be in Ms. Ruiz's name. Mr. Gonzalez made these misrepresentations in Spanish which is the only language Mr. Ruiz speaks. After it was signed, the Ruizes asked for a copy. Mr. Gonzalez did not have a copy but promised to mail one within a few days. He never did. Ms. Ruiz asked for a copy of the document on several subsequent occasions but was ignored. Mr. Ruiz only received a copy of the automobile sale contract in September 2012 from the bank.

The cross-complaint seeks as relief: contract rescission; restitution; general and, and exemplary damages; attorney's fees; and costs.

### C. Cross-Defendants' Petition to Compel Arbitration

On November 14, 2013, cross-defendants filed a petition to compel arbitration of the Ruizes' cross-complaint. Cross-defendants relied upon the arbitration provisions in the automobile sale agreement signed by Mr. Ruiz at his home in the middle the night on September 18, 2011. Cross-defendants argued the Federal Arbitration Act applied because the claims arise from the purchase of a Dodge manufactured in Auburn Hills, Michigan from a dealership in Downey, California. Thus, according to cross-defendants, the dispute involved interstate commerce. The agreement also expressly indicated it would be governed by the Federal Arbitration Act. Cross-defendants maintained the arbitration agreement was not unconscionable. The Ruizes filed their opposition on December 26, 2013. The Ruizes argued: the bank waived its right to arbitration because it litigated its complaint for over a year; the arbitration clause was unenforceable as void in the execution; the arbitration provisions are unconscionable; and the claims against Ms. Ruiz are not subject to arbitration because she did not sign the automobile sale contract. We shall detail later the evidence indicating there was fraud in the execution of the automobile sale contract which contains the arbitration provisions.

### D. The Arbitration Agreement

The arbitration agreement signed by Mr. Ruiz on September 18, 2011 states: "1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL. [¶] 2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. [¶] 3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND

OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.”

In addition, the arbitration provision states: “Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Clause, and the arbitrability of the claim or dispute) between you and us or our employees, agents, successor or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Clause shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. You expressly waive any right you may have to arbitrate a class action. You may choose one of the following arbitration organizations and its applicable rules: the National Arbitration Forum, Box 50191, Minneapolis, MN 55405-0191 ([www.arb-forum.com](http://www.arb-forum.com)), the American Arbitration Association, 335 Madison Ave., Floor 10, New York, NY 10017-4605 ([www.adr.com](http://www.adr.com)) or any other organization that you may choose subject to our approval. You may get a copy of the rules of these organizations by contacting the arbitration organization or visiting its website.”

Also, the arbitration agreement provides: “Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law in making an award. The arbitration hearing shall be conducted in the federal district in which you reside unless the Creditor-Seller is a party to the claim or dispute, in which case the hearing will be held in the federal district where this contract was executed. We will advance your filing, administration service or case management fee and your arbitrator or hearing fee all up to a maximum of \$2500, which may be reimbursed by decision of the arbitrator at the arbitrator’s discretion. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization’s rules conflict

with this Arbitration Clause, then the provisions of this Arbitration Clause shall control. The arbitrator's award shall be final and binding on all parties, except that in the event the arbitrator's award for a party is \$0 or against a party is in excess of \$100,000, or includes an award of injunctive relief against a party, that party may request a new arbitration under the rules of the arbitration organization by a three-arbitrator panel. The appealing party requesting new arbitration shall be responsible for the filing fee and other arbitration costs subject to a final determination by the arbitrators of a fair apportionment of costs. Any arbitration under this Arbitration Clause shall be governed by the Federal Arbitration Act ( 9 U.S.C. § 1 et. seq.) and not by any state law concerning arbitration."

Finally, the arbitration agreement states: "You and we retain any rights to self-help remedies, such as repossession. You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate by using self-help remedies or filing suit. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Clause shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of this Arbitration Clause shall be unenforceable."

#### E. Trial Court's Order Denying Petition to Compel Arbitration

On January 9, 2014, the trial court held the hearing on cross-defendants' petition to compel arbitration. The trial court denied the petition to compel. The trial court found the bank had not waived its right to compel arbitration. But, the trial court ruled the arbitration clause was unconscionable. There were other issues raised by the Ruizes

where the trial court did not make express findings. The trial court never made any ruling concerning the fraud in inception issue.

### III. DISCUSSION

The Ruizes argue we need not address cross-defendants' arguments concerning unconscionability and the like. Rather, the Ruizes contend that we should affirm the order under review on the ground there was fraud in the execution of the automobile sale agreement. As noted, the automobile sale contract executed by Mr. Ruiz in the middle of the night contains the arbitration provisions we have previously described in depth. In the trial court, the Ruizes argued that the arbitration provisions are unenforceable because the automobile sales contract was void as it was procured through fraud. As we shall explain, we conclude that the trial court impliedly found that fraud in the execution of the agreement occurred.

We first address the issue of the effect of the implied findings of the trial court. As noted, the trial court denied the petition to compel arbitration on unconscionability grounds. The trial court's express findings make no reference to the Ruizes' fraud in the execution contention. However, the doctrine of implied findings requires we infer the trial court made all factual findings necessary to support the judgment. (*Oceguera v. Cohen* (2009) 172 Cal.App.4th 783, 794; *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58.) Our Supreme Court has held: "A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]" (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; see *Mathew Zaheri Corp. v. New Motor Vehicle Bd.* (1997) 55 Cal.App.4th 1305, 1313 ["[W]e presume that the judgment is correct. As to factual matters not actually and unequivocally determined in the opinion of the trial court, we imply any necessary findings in support of the judgment which are supported by the evidence."].) In the

cross-complaint, Mr. Ruiz’s first cause of action is for fraud in the execution. The trial court did not make explicit findings as to this cause of action in its statement of decision.

Our Supreme Court described fraud in the execution: “California law distinguishes between fraud in the ‘execution’ or ‘inception’ of a contract and fraud in the ‘inducement’ of a contract. In brief, in the former case “the fraud goes to the inception or execution of the agreement, so that the promisor is deceived as to the nature of his act, and actually does not know what he is signing, or does not intend to enter into a contract at all, mutual assent is lacking, and [the contract] is *void*. In such a case it may be disregarded without the necessity of rescission.” [Citation.] Fraud in the inducement, by contrast, occurs when “the promisor knows what he is signing but his consent is induced by fraud, mutual assent is present and a contract is formed, which, by reason of the fraud, is *voidable*. In order to escape from its obligations the aggrieved party must *rescind . . .*” [Citation.]” (*Rosenthal v. Great Western Financial Securities Corp.* (1996) 14 Cal.4th 394, 415 (*Rosenthal*); *Mt. Holyoke Homes, L.P. v. Jeffer Mangels Butler & Mitchell, LLP* (2013) 219 Cal.App.4th 1299, 1308 (*Mt. Holyoke*); *Duick v. Toyota Motor Sales, U.S.A., Inc.* (2011) 198 Cal.App.4th 1316, 1320-1321 (*Duick*)).

Our Supreme Court further explained reasonable reliance as an element of fraud in the execution: “A contract may . . . be held wholly void, despite the parties’ apparent assent to it, when, “*without negligence on his part*, a signer attaches his signature to a paper assuming it to be a paper of a different character.” [Citations.] [¶] The Restatement position is similar. Restatement Second of Contracts section 163, titled ‘When a Misrepresentation Prevents Formation of a Contract,’ states as follows (italics added): ‘If a misrepresentation as to the character or essential terms of a proposed contact induces conduct that appears to be a manifestation of assent *by one who neither knows nor has a reasonable opportunity to know* of the character or essential terms of the proposed contract, his conduct is not effective as a manifestation of assent.’” (*Rosenthal, supra*, 14 Cal.4th at pp. 419-420; see *Mt. Holyoke, supra*, 219 Cal.App.4th at p. 1308; *Duick, supra*, 198 Cal.App.4th at p. 1321.) In the context of arbitration, our Supreme Court held: “[C]laims of fraud in the execution of the entire agreement are not arbitrable



under state or federal law. If the entire contract is void *ab initio* because of fraud, the parties have not agreed to arbitrate any controversy . . . .” (*Rosenthal, supra*, 14 Cal.4th at p. 416; see *Costa Serena Owners Coalition v. Costa Serena Architectural Com.* (2009) 175 Cal.App.4th 1175, 1193.)

Here, substantial evidence supports a finding that there was fraud in the execution of the automobile sale contract. Mr. Ruiz’s declaration describes the late-night conversation with Mr. Gonzalez. Mr. Ruiz declared: he does not speak or read English; the documents were solely in English; he asked why he needed to sign any documents because he was not the buyer of the new Dodge; Mr. Ruiz was told his signature was needed because he was the owner of the trade-in; Mr. Ruiz did not believe he was buying a new car; he was pressured to sign the automobile sale contract quickly; he felt pressured and he never received a copy of the automobile sale contract. Mr. Ruiz declared: “I felt very pressured by [Mr. Gonzalez]. He kept saying ‘You just need to initial here and here’ and ‘let’s get this done.’ He said he just needed my signature, that it would be fast, that he did not want to bother me, and that [Ms. Ruiz] would handle everything else. The documents he gave me were written in English, and he did not provide a translation of them.”

Ms. Ruiz declared: “[Mr. Gonzalez] instructed my father, in Spanish, to sign the document in various places. My father does not speak or read English. When instructed were to sign by [Mr. Gonzalez], my father said, in Spanish, ‘yes, but this is going to be in Wendy’s name?’ and [Mr. Gonzales] replied in Spanish ‘yes, we are changing everything to Wendy’s name.’ [¶] . . . My father then signed and we asked for a copy. [Mr. Gonzalez] said ‘I don’t have a copy for you, I’m going to fix everything and get you the new contract in the next few days.’ [Mr. Gonzalez] said on several occasions that he had never closed a sale at a customer’s home and he did not know exactly how it was going to work with the paperwork. We did not receive a copy of the contract at that time.” Ms. Ruiz also declared: Mr. Gonzalez instructed Mr. Ruiz to sign the documents in various places; Mr. Ruiz asked if the new car would be in her name; and Mr. Gonzalez stated that everything would be changed to her name.

Thus, substantial evidence supports the trial court's implied findings that Mr. Ruiz was unaware aware he was signing the automobile sale contract for the *new* car. Mr. Ruiz would not have had a reasonable opportunity to know that he was signing the automobile sale agreement. Mr. Ruiz did not read English. The automobile sale agreement was written only in English and there was no Spanish translation available. Mr. Ruiz was awakened after midnight at his home and pressured to sign the contract quickly. The trial court could reasonably impliedly conclude Mr. Ruiz had no reason to distrust Mr. Gonzalez's representations concerning the necessity of a signature. As noted, Mr. Ruiz was falsely told that his signature was needed because he was the owner of the car Ms. Ruiz was using as the trade-in. Further, the trial court reasonably could have relied upon the Ruizes' declarations and concluded Mr. Ruiz was not negligent when pressured by Mr. Gonzalez in the middle of the night.

Given the trial court's implied findings concerning fraud in the execution of the automobile sales contract, there was no enforceable arbitration agreement. (*Rosenthal, supra*, 14 Cal.4th at p. 416; *Duffens v. Valenti* (2008) 161 Cal.App.4th 434, 448-449; *Hotels Nevada v. L.A. Pacific Center, Inc.* (2006) 144 Cal.App.4th 754, 763-764.) And, because there was no enforceable agreement, the Federal Arbitration Act does not require enforcement of the arbitration provisions in the automobile sale contract. (9 U.S.C. § 2; *Prima Paint v. Flood & Conklin* (1967) 388 U.S. 395, 404; *Rosenthal, supra*, 14 Cal.4th at p. 415 & fn. 8.) The trial court did not err by denying the motion to compel arbitration. We need not address the parties' remaining arguments.

#### IV. DISPOSITION

The order denying the petition to compel arbitration is affirmed. Cross-complainants, Edgardo and Wendy Ruiz, are awarded their appeal costs from cross-defendants, Bank of the West, Champion Chrysler Jeep Dodge, and Louie Gonzalez.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.